Supreme Court of the United States

October Term, 1920

No. 152

NEW ORLEANS LAND COMPANY,
Appellant,

versus

LEADER REALTY COMPANY, LTD.
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR THE NEW ORLEANS LAND COMPANY.

CHS. LOUQUE,
W. O. HART,
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This case presents only a question of jurisdiction.

Can the Courts of the United States maintain the validity and effect of their judgments, and protect the

titles of property purchased under their orders, when sitting in equity, in the exercise of their lawful jurisdiction and when such sales have been duly confirmed?

Do not such purchasers become parties to the original suit, and when they seek the protection of the Court are they not entitled to present their complaint in ancillary proceedings?

SYLLABUS.

When a Court of the United States first obtains jurisdiction of the parties and of the *res*, its judgments are final and conclusive.

A State Court must respect the judgments of the United States Courts and has no jurisdiction to set them aside.

The United States Courts which order the foreclosure of a trust by the sale of the trust property receives and orders the purchase price, in its registry and has not yet distributed the same, may in the exercise of its jurisdiction protect the funds on deposit by enjoining the State Courts and the parties from interferring with the purchasers of the trust property. 193 *U. S.*, 93, 112; *Julian vs. Central Trust*, 148 *U. S.*, 529, 533, 534; 132 *Fed.* 945, 949; 151 *Fed.*, 145, 160; *Fed.* 360; *Lang vs. Choctaw Oklahoma and Gulf R. R. Co.*, 36 *Fed.* 337; 22 *Wall*, 250, 103; *U. S.*, 494; 2 *How*, 340; 10 *Peters* 475.

Good faith and the correct administration of justice requires the Court having jurisdiction should protect the purchasers who are by the fact of their purchase, parties

to the suit. 2 *Wall*, 634; 10 *Paige* 602; *Calvert* on parties in equity and note to page 61, an ancillary bill, is one which has reference to a previous proceeding and is so connected with it, that it seeks to obtain some action to protect the decree previously rendered and make it effective. 160 *Fed.* 360; *Lang vs. Choctaw, Oklahoma and Gulf Co.*, and authorities there cited.

Will the State Court be allowed to annul and destroy the judgments and decrees of the United States Courts and the titles made thereunder when the United States Courts had first obtained jurisdiction of the persons and of the *res*.

Does not the United States Court retain its jurisdicton so long as the proceeds of the sale remain under the control of the Court deposited in its registry, and can the same Court not protect the titles of property sold by it, so that a refund of the proceeds become unnecessary?

These are the questions presented by the record.

We lay down the proposition, at the start, "that a " purchaser or bidder at a master's sale, subjects himself " *quoad hoc* to the jurisdiction of the Court and becomes " so far a party to the suit, by the mere act of making a " bid, that he could appeal from any subsequent order of " the Court affecting his interest. 2 *Wall* 634; *Minnesota Co. vs. St. Paul Co.;* 10 *Paige* 612; *Calvert* on parties to suits in equity, pages 51, 58 and note to page 61.

This case is of the greatest importance by reason of the values in dispute and of the principles involved.

The United States Court having first obtained jurisdiction of the parties and of the *res*, its decisions could not be upset and overruled by the State Courts.

When the United States Court decided to foreclose the trust for the benefit of the beneficiary, it in effect, declared that a trust did exist.

The State Court years afterwards could not legally, as it did, decide to the contrary, that there was no trust.

The judgment of the United States Court decided in effect, that the property to be sold was affected by the lien created by statute; the State Court decided that no lien existed.

The United States Court ordered its receiver to give good and valid titles to the purchaser; the State Court decided that the receiver could give no valid title to the purchaser.

No Appellate Court could as effectually have destroyed the judgment of the Circuit Court as the State Court actually did more than ten years after its rendition.

The facts which brought about the institution of this ancillary bill, are:

That on December 18th, 1884, James W. Peake, a citizen of New York, brought suit against the City of New

Orleans, as trustee of the drainage fund and recovered judgment against the City, "to be paid out of the drainage fund". *R.* 8 *to* 17.

The same Plaintiff, then brought a suit in equity against the City of New Orleans to render her liable for the whole debt due by the drainage fund, amounting, as found by this Court to $2,242,514.78, alleging a breach of trust. *R.* 17 *to* 22., 139 *U. S.* 249.

This Honorable Court decided that inasmuch as the City was not a voluntary trustee and had exerted her best judgment in the administration of the trust that no personal liability existed. *R.* 22., 139 *U. S.* 249 *to* 351, *Peake v. City of New Orleans.*

Thereupon the same complainant, James W. Peake, still a citizen of New York, brought his bill against the City of New Orleans, "to the end that the trust fund " created by Act 30 of 1871 and the other Acts of the " Legislature of the State of Louisiana, hereinbefore " referred to may be closed up and all the assets and " property thereof may be sold, and the proceeds of sale " be applied to the payment of the creditors of said fund; " to appoint a Receiver to take possession and charge " of all the property and assets of every nature and kind, " real, personal or mixed, now held and possessed by the " said City of New Orleans under and pursuant to said " Acts of the Legislature of the State of Louisiana to-wit: " Act No. 165 of 1858; 191 of 1859; No. 57 of 1861; and " Act No. 30 of 1871; and under the direction of the " Court, to sell and dispose of the same and apply the

" proceeds of said sale to the payment of the creditors of " said fund." *R.* 23-24.

The City answered.—*R.* 24 *to* 28.

The Receiver was duly appointed. *R.* 29.

The Court in rendering the order added specifically:

> "And the said Complainant, or the said Receiver " shall be at liberty to apply to the Court from time " to time, for such further order or direction as may " be necessary." *R.* 29.

An inventory of the property held by the City in trust was made. *R.* 29 *and* 30.

The Receiver applied for the sale of the property inventoried to pay the debts. The Judge ordered the sale to be made at public auction, after legal advertisement, to the highest bidder, for cash, and "the Receiver was au- " thorized and empowered to execute and deliver to the " purchasers **good and valid titles, free from all liens, " mortgages or encumbrances if any there are.**" *R.* 31.

The Receiver advertised and sold the property. *R.* 31 *to* 40. The portion in litigation was sold to Dr. C. A. Gaudet, the transferer of Complainant. *R.* 40 *to* 49.

These sales were duly confirmed after hearing the opposition made by the City of New Orleans, the statutory transferee of the State. *R.* 49.

The City appealed from the judgment of confirmation to the Circuit Court of Appeals for the Fifth Circuit.

The judgment of confirmation was affirmed and the mandate issued in June 1890. *R.* 50-51.

Dr. Gaudet sold to the complainant in 1893. In 1909 the Leader Realty Co., filed suit against the Complainant in the Civil District Court for the Parish of Orleans, to recover the property sold, basing its title on a state patent, issued in 1874, three years after the passage of Act 30 of 1871, creating the trust; this land patent was never placed of record in the Conveyance Office. *R.* 51-52.

The land patent was of no validity since the State had already disposed of her interest to the City.

To this suit the New Orleans Land Co. pleaded that as transferree of Dr. Gaudet it acquired the land by virtue of the foreclosure of the trust above recited and that the judgment of the Circuit Court which ordered the sale and confirmed the same was binding on the State Court and could not be disregarded. *R.* 53.

Nevertheless the Judge of the State Court gave judgment for the land. *R.* 55-56.

This judgment was affirmed by the Supreme Court of Louisiana. *R.* 57 *to* 63.

The judgment of the Supreme Court contains the admission, that the land in contest is the same bought by Dr. Gaudet. *R.* 60. It also admits that the property was purchased by him by virtue of orders issued by the Circuit Court of the United States. *R.* 60.

A writ of error to this Court was dismissed for want of jurisdiction. The Complainant then applied to the District Court of the United States, to protect, the title which that Court had sold through its Receiver, alleging the facts above stated. *R.* 1 *to* 5.

The prayer of the bill was for the issuance of a writ of injunction to protect and preserve the judgments and titles given thereunder to your Complainant. The bill was filed in the same proceedings for the foreclosure of the trust. The Judge issued a rule *nisi*, and after hearing the parties, refused the injunction and dismissed the bill for want of jurisdiction. The Reasons given by the Judge are at p. 72 of the Record.

The Judge in substance said that there was no diversity of citizenship shown. That neither the New Orleans Land Co., nor the Leader Realty Co. were parties to the original suit of *Peake against the City of New Orleans* and **" therefore the mere fact that the property in con- " troversy was sold under orders of this Court does not " raise a Federal question."** *R.* 72-73.

In passing on a rule for new trial the Judge said:

> "In this case the motion for a new trial has been " earnestly pressed, but I cannot see my way clear to " grant it.
>
> "In the original case the Court had jurisdiction " only by diversity of citizenship. The Circuit Court " rendered a final decree, without retaining juris- " diction for any purpose.

"The Court of Appeals affirmed the judgment and " jurisdiction over the land sold, passed entirely out " of the Circuit Court by the sale. I cannot see that " that issues now presented are ancillary to the " original suit or are in any way connected with it.

"One point, however, seems to be well taken. It was " unnecessary for this Court to express an opinion " as to the plea of *res judicata* raised by the defendant. " That part of the opinion will be recalled and the " bill will be dismissed for want of jurisdiction." *R.* 77.

The complainant took the present appeal to this Court.

The question is narrowed down to whether or not this bill is original or ancillary.

This Honorable Court, in *Julian vs. Central Trust*, 193 *U. S.*, 93, said:

• • "We are of opinion that a supplemental bill may be " filed in the original suit, with a view to protecting " the prior jurisdiction of the Federal Court and to " render effectual its decree (citing authorities). " In such cases where the Federal Court acts in aid " of its own jurisdiction and to render its decree " effectual, it may, notwithstanding Section 720 " *R. S.*, restrain all proceedings in a State Court " which would have the effect of defeating or im- " pairing its jurisdiction."

The Eighth Circuit Court of Appeals, Judge Trieber as the organ of the Court, followed this ruling in the case of *Smith vs. Missouri Pacific R. Co.*, 266 *Fed.*, 655-666, quoting the case of *Lang vs. Choctaw, Oklahoma and Gulf*

R. Co., 160 *Fed.* 355, 360, saying: "A bill in equity, dependant upon a former suit, in the same Court, may be maintained by the purchaser under the decree, or **by any other party interested therein**, to aid, enjoin or regulate the original suit; to restrain, avoid, explain, **or enforce the judgment or decree therein**; or to enforce, to enjoin the enforcement of, or to obtain an adjudication of liens upon or **claims to property** involved in the original suit. *Brun vs. Mann*, 151 *Fed.* 145, and where a Federal Court acts in aid of its own jurisdiction to render its decree **or the title under it effectual**, it may, notwithstanding Section 720 *R. S.*, restrain all proceedings in a State Court which would have the effect of defeating or impairing its jurisdiction; quoting 36 *Fed.*, 337; 22 *Wall*, 250; 103 *U. S.* 494.

The test by which an original bill differs from an ancillary one, is by the relief sought and prayed for.

The complainant in this case seeks no other relief than that the judgment ordering the sale and the confirmation of the sale be maintained in full force and that the State Court be not permitted to interfere with the purchaser. *R.* 4.

No new issue is injected into this case; no new title is alleged or claimed. The whole question raised is that the Circuit Court having acquired jurisdiction, should maintain it and preserve the rights acquired under the exercise of that jurisdiction.

It was a very limited and narrow view for the lower Judge to take, when he decided that 'the complainant

was not a party to the foreclosure of the trust. Dr. Gaudet, the purchaser, certainly was. When he sold to the New Orleans Land Company, that company acquired all his rights to protection and became a party to the proceedings.

If the jurisdiction of the Circuit Court could extend no further than the original purchaser, no one would be found to acquire from him. Indeed the protection of the Court extends to the *res* of which the Court had possession and which the Court transferred.

To say that the parties to the Peake suit are not the same as in the present controversy is to ignore the fact that the State of Louisiana through her transferee, the City of New Orleans, was a party to the Peake case.

That the State, the previous owner, having once in 1871, by act of the Legislature, transferred her interest, to the City of New Orleans, could not subsequently, in 1874, transfer her interest to another party. She had nothing to transfer. The purchaser at the receiver's sale purchased all the interest which the State had and the purchaser stands in her shoes. More than that, and to show the illegality and vicious nature of the title set up by the Leader Realty Company, the State had by the acts of 1858, 1859, 1861 and 1869, directed the drainage boards how to proceed to divide the territory to be drained; how to levy a drainage assessment thereon, how the property should be seized and sold for the non-payment of the assessments and how the drainage boards were authorized to purchase same.

In pursuance thereof, the property now claimed by the Leader Realty Co. was assessed, seized, sold and purchased by the drainage boards and stood in their names when the Legislature in 1871 transferred the same to the City of New Orleans, to be held in trust for the payment of the work of drainage done by the Mexican Gulf Ship Canal Co.

The property was inventoried as such by the Receiver and transferred by the City of New Orleans as trustee to the Receiver and was subsequently sold by the Receiver under the orders of the Circuit Court to Dr. C. A. Gaudet.

It was in 1871, under Act No. 30 that the City became the trustee of all the property belonging to the drainage district in the City of New Orleans. This act of the Legislature ratified the title which the drainage boards had acquired and did effectually transfer the same to the City of New Orleans, to be held in trust for benefit of the drainage and eventually for the benefit of the City if not needed for drainage.

It does not lie in the power of the State nor of any of its transferees to deny the validity of the drainage assessments.

To say that the parties in the *Peake* case are not the same as in this suit is to disregard the fact that the transferers and transferees stand in the same light before the Court.

The State was present through her transferee the City of New Orleans; the creditor of the drainage fund, the transferee of the Mexican Gulf Ship Canal Co. and the pur-

chaser Dr. Gaudet who represented his transferee the New Orleans Land Co. were all parties to the original suit. The judgment foreclosing the trust being rendered against the first transferee of the State, bound the second transferee whose transfer was null, but even if valid was unregistered and was of no effect and null as to third persons.

The Legislative Act of transfer was passed in 1871; the sale to Dr. Gaudet was made in 1892 and completed in 1893 by a notarial act. The judgment of the Court concluded all previous acts and parties.

The patent of Dr. Smythe, even if valid and his transfer to the Leader Realty Co. were never placed of record in the Conveyance office, and were of no force and effect as to third persons and *bona fide* purchasers.

There existed no outstanding title superior to that of the Receiver. He held all that the State had and his transfer under the orders of the Court passed a complete and perfect title. The State had, by the Act of 1871, No. 30, transferred to the City of New Orleans and the City transferred to the Receiver in 1891. The Receiver sold to Dr. Gaudet. *R.* 48.

The act of sale executed by the Receiver to Dr. Gaudet recites: "By reference to the certificates from the register " of conveyance and the recorder of mortgages in and for " this Parish, annexed hereto, and of even date hereto, " it does not appear that said property had been heretofore " alienated by the City of New Orleans or the Board of " Drainage Commissioners or that it is subject to any " encumbrance whatsoever." *R.* 48.

It was within the power of the State of Louisiana to levy an assessment for drainage within the drainage district and create a lien to pay for the work of drainage. The State did in effect do that very thing, and authorized the Board of Commissioners to purchase the property in payment of the assessment. The property stood in the name of the Board of Drainage Commissioners when the Act of 1871 was passed transferring the same to the City to be held in trust for the payment of the drainage work. If the property was that of the State, this Court has held in the case of *New Orleans vs. Warner*, 175 *U. S.* 138, that public property was subject to an assessment for public improvement. Passing on that question this Court said:

"The argument is that public property being
" exempt from taxation is also exempt from these
" assessments; but the authorities have long recog-
" nized a distinction between general taxes, which are
" for the benefit of the public generally, and which in
" the nature of things the public must directly or in-
" directly pay and special assessments for the benefit
" of particular property, which are a charge upon the
" property benefitted. If this be private property,
" then each owner of such property pays his share; if
" it be public property the City pays it, as the agent
" of the entire body of citizens, who are assumed to
" have benefitted to that extent. 38 *A.* 323; 11 *A.*
" 338; 13 *A.* 319; 26 *A.* 362; 41 *A.* 251-259.

"In the *County of McLean vs. Bloomington*, 106
" *Ills.* 209, it was also claimed that public property
" being expressly exempt from taxes, was also exempt
" from special assessments. But said the Court, 'We
" have been too long and too firmly committed to the
" doctrine that exemption from taxation does not ex-

" cept from special assessments, to now admit, that
" it is even debatable.'

"This ruling was followed in *Adams Co. vs. Quincy,*
" 130 *Ills.* 566; *Beach on Public Corporations, Sec*
" 1172. * * * Private owners may be assumed to be
" interested in draining their own property, but in the
" absence of a special provision to that effect, there is
" no presumption that they are also to be called upon
" to pay that which *prima facie* belongs to the public.
" Indeed, in view of a recent decision in Massachu-
" setts, it may well be doubted whether the Legis-
" lature could impose the cost of draining public
" property upon private lot owners. *Sears vs. Street*
" *Commissioners.* 53 *N. E. Rep.* 876." 27 *A.* 497,
" *State ex rel Van Norden vs. New Orleans.*

So that when the Act of 1871, No. 30, created the trust in favor of the Mexican Gulf Ship Canal Co. the contractor for the drainage work, and subrogated the City of New Orleans to all the rights, privileges and liens held by the various Boards of Drainage Commissioners; the Circuit Court of the United States in ordering the sale of the property to foreclose the trust, sold it under this first existing lien and neither the State nor the Register of the Land Office could give a title free from such lien.

The judgment of the Circuit Court forever closed this question. The purchaser at the receiver's sale, could not afterwards be legally disturbed by a transferee of the State claiming the property free from any lien. The question having been closed by a prior judgment rendered by a Court of competent jurisdiction, was not open for review by the State Court. It is not only the right of

the complainant to claim protection, but it is the duty of the Court, having been seized first of jurisdiction, to extend its protection to the purchaser and his transferee.

It is firmly established that when a Court of competent jurisdiction has passed on a question of title, to real estate, that question is forever set at rest as against the world.

As long as the decree under which the sale has been made, remains in force, the purchaser is protected. *Werlein vs. New Orleans*, 177 *U. S.*, 403; 2 *Peters* 157; 112 *Fed.* 48; 106 *Fed.* 115; 229 *U. S.* 259; *Robertson vs. Howard.*

In the case of *Gregnon's Lessee, vs. Astor and als.*, 2 *How*, 343, this Court held that when the Court ordering the sale, was vested with jurisdiction, its decision was conclusive. The Court said:

> "We do not deem it necessary, now or hereafter, to retrace the reasons of the authorities, on which the decisions of this Court in that or the cases which preceded it, rested; they are founded on the oldest and most sacred principles of the common law. Time has consecrated them; the Courts of the States have followed, and this Court has never departed from them. They are rules of property, on which the repose of the country depends; *titles acquired under the proceedings of Courts of competent jurisdiction must be deemed inviolable in collateral actions, or none can know what is his own*, and there are no judicial sales around which greater sanctity ought to be placed, than those made of the estate of decedents, by order of those Courts to whom the laws of the States confide full jurisdiction over the subjects." (2 *How* 343.)

In the case of *Voorhees vs. Bank of the United States*, 10 *Peters* 475, the Supreme Court of the United States says:

> "It would be a well-merited reproach to our jurisprudence, if an innocent purchaser, no party to the suit, who had paid his money on the faith of an order of a Court; should not have the same protection under an erroneous proceeding, as the party who derived the benefit accruing from it. A purchaser under judicial process, pays the plaintiff his demand on the property sold, to the extent of the purchase money he discharges the defendant from his adjudged obligation." * * * "the principles which must govern this and all other sales by judicial process, are general ones adopted for the security of titles, the repose of possession and the enjoyment of property by innocent purchasers, who are the favorites of the law in every Court and by every code. Nor shall we refer to the decisions of State Courts, or the adjudged cases in the books of the common law; our own repeated and uniform decisions cover the whole case, in its most expanded view; and the highest considerations call upon us so to reaffirm them; that all questions such as have arisen in this cause, may be put to rest in this and the Circuit Courts." 10 *Peters* 475; *Voorhies vs. Bank of the United States.*

The Circuit Court of the United States and its successor, the District Court have not lost jurisdiction of the original cause of *Peake vs. City of New Orleans*, because the object of the bill of complaint, was to foreclose the trust, sell the property and distribute its proceeds to the beneficiaries.

The funds are still in the registry of the Court and have never been distributed. The Receiver died, but he has never been discharged. The trust is not yet liquidated, and the whole matter is still in the hands of the Court. The case is still open **for such further orders or directions as the Receiver might deem necessary".**

The Receiver could, if the sale to Dr. Gaudet and his transferer be of no effect, and declared null, apply to the Cour to refund to the purchaser the proceeds paid by him into the registry of the Court. This cannot be disputed.

If the Court has not lost control of the fund, and can dispose of it, the Court certainly can protect it. Is it not as clear as can be that the Court can exercise its jurisdiction in preventing the property sold from being taken away from its purchaser, by persons having no title to it and in doing so does not the Court protect the fund, by rendering a refund unnecessary.

As long as the Receiver is not discharged and has not distributed the funds realized from the sale of the property held in trust, the Court has the power to protect the jurisdiction it has acquired over the trust fund. Can it be possible that an enlightened tribunal, will allow the State of Louisiana, to order work of drainage to be performed, place the property to be drained in trust, for the payment of the work of drainage ordered, amounting to over $2,000,000, and then patent the land drained, free of any lien or trust to a third person?

The United States Court which rendered a judgment foreclosing the trust for the benefit of drainage contractor,

cannot in good moral, now reverse itself and abandon its *bona fide* purchaser to the mercy of another tribunal, usurping the jurisdiction of an appellate tribunal to overrule the findings and judgments of the United States Courts.

Appellant, therefore, prays that the judgment appealed from be reversed and that this cause be remanded with instructions to proceed to the trial on the merits and meanwhile that the injunction prayed be issued.

Respectfully submitted

CHS. LOUQUE,
W. O. HART,
Of Counsel.

N. O., Dec. 30, 1920.